JANUARY-FEBRUARY 1952

Case and Comment

The Lawyers' Magazine—Established 1894

IN THIS ISSUE

Volume 57 No. 1

From the Publishers

How to reduce

Hours

to

minutes

REMEMBER the old A.L.R. Digest and how you had to track down cases through *five* separate Digests?

Now you can forget that time-consuming operation. In the *new,* PERMANENT A.L.R. DIGEST all the cases in Volumes 1–175 in A.L.R. are under only ONE alphabet . . . to reduce hours of search to only a few minutes.

What's more, the new A.L.R. DIGEST has many other time-saving, trouble-saving features. To name a few, references lead you directly to annotations in A.L.R. . . . the old "short-line" digest is supplanted by the more valuable full paragraph treatment showing the courts' holdings . . . citations guide you to the wealth of information in American Jurisprudence . . . cross references reveal collateral topics *at once.*

Get the details today about this new PERMANENT A.L.R. DIGEST. Simply write either associated publisher.

The Lawyers Co-operative Publishing Co.
Rochester 14, N. Y.

Bancroft-Whitney Company
San Francisco 1, Calif.

Justice for All

By HOWARD L. BARKDULL
President of the American Bar Association

Reprint of a talk broadcast over the coast-to-coast radio network of the Columbia Broadcasting System from New York, October 10, 1951.

I AM going to talk to you about what is being done to make "justice for all" a reality in the United States. By "justice" I simply mean fairness under the circumstances. By "all" I mean everyone, rich and poor, male and female, white and colored, young and old.

Government has two basic purposes. First, to see that justice is done among the citizens of the nation, and second, to protect the nation from its enemies abroad. Today, our enemy abroad asserts that our courts and lawyers are nothing more than the hired lackeys of greed and privilege. Our enemy's adherents say lawyers' fees are high, often beyond the means of middle income men and women; and the poor, the Communists say, the poor are abused and cheated because they do not have the help of lawyers or courts.

These are serious charges, with some truth in them. How much truth? Does the law really exist to protect the vested interests of the rich and powerful, to keep the poor and weak defenseless and bowed?

In reply, we could mention the absence in the United States of knocks on the door at 3:00 a.m., the absence of millions of slave laborers, the absence of ruthless secret police and the absence of courts with no traditions of individual rights. We could find these reprehensible features and worse in the country our accusers used to call the Worker's Paradise. But, if "equal justice under law," the words engraved over the entrance to the Supreme Court of the United States, is our ideal, and we know it is, we must look at the facts squarely. We must ask "Do the persons unable to pay fees get justice?" And since justice or fairness is hard to pin down for a factual investigation, let us change the question to this: "Are the services of a lawyer available to persons who are unable to pay fees?" Without the services of a lawyer, the chances of a fair result in a domestic matter, a land dispute, the settlement of a small estate, a claim for damages or the like, are slim. We live in a complex world, with a multitude of ordinances, regulations, laws, board and court decisions, with many exceptions, amendments and qualifications. A lawyer is trained by years of study to find the

law, interpret it, apply it to actual cases.

Are the services of a lawyer available to persons who aren't able to pay fees? The answer to this question is contained in a book published by The Lawyers Co-operative Publishing Company for the Survey of the Legal Profession, under the auspices of the American Bar Association. Its title is *Legal Aid in the United States* and its author is Emery A. Brownell, the Executive Director of the National Legal Aid Association. Written as a major report for the Survey of the Legal Profession, it is, according to Reginald Heber Smith, Director of the Survey, "the most authoritative compilation of the facts concerning Legal Aid in the United States that can be found anywhere." Mr. Smith is qualified to speak. He was a pioneer and is still a leader in the Legal Aid movement. Thirty years ago when he wrote the classic study *Justice and the Poor* on the same subject, Legal Aid was practically unknown.

Who Are "The Poor"?

Are the services of a lawyer available to the poor who aren't able to pay fees? Do we in fact have "justice for all" in the sense that all persons, even the poor, can get legal advice and representation in court or before administrative tribunals? By "the poor" we do not mean merely the destitute. Legal Aid exists to serve those who, after providing the necessities of life for their families and themselves, have nothing left with which to pay lawyers' fees however reasonable they may be.

Mr. Brownell's report states the facts, facts gathered by intensive effort over three years. Travelling well over 40,000 miles, he visited every Legal Aid office and active committee in the United States, 123 in all in 103 different localities. He checked his findings with experts in every state.

I am going to tell you what the facts are as to the availability of legal services for people without means, and how Legal Aid fits into the official six-point program of the American Bar Association. In a few words this program of the American Bar Association is:

Six-Point A.B.A. Program

1. Preservation of representative government in the United States through a program of public education and understanding of the privileges and responsibilities of American citizenship.

2. Promotion and establishment within the legal profession of organized facilities for the furnishing of legal services to all citizens at a cost within their means.

3. Improvement of the administration of justice through the selection of qualified judges and adherence to effective standards of judicial administration and administrative procedures.

4. Maintenance of high standards of legal education and professional conduct to the end that only those properly

qualified shall undertake to perform legal services.

5. Promotion of peace through development of a system of international law consistent with the rights and liberties of American citizens under the Constitution of the United States. And finally,

6. Co-ordination and correlation of the activities of the entire organized bar of the United States.

That is the six-point program recently adopted by the American Bar Association and to which my efforts as president in the coming year will be dedicated. We have many able, hard-working sections and committees staffed by hundreds of lawyers in our Association, which itself has more than 46 000 members and through its House of Delegates represents more than 130,000 lawyers. Better citizens, better courts, better lawyers, better world, better bar associations—all these aims are closely related to our aim of making legal services more widely available. I call your attention to the words of Judge Learned Hand "If we are to keep our democracy, there must be one commandment 'Thou shalt not ration justice.'"

Still a Long Way to Go

Mr. Brownell's report to the Survey of the Legal Profession discloses that, even though the United States has the best Legal Aid record in the world, we still have a long way to go. He finds that a minimum of thirty million persons in the United States, more than half in urban centers, are dependent on Legal Aid for needed advice and services. He found no organized Legal Aid facilities in 50 United States cities of over a hundred thousand population—and that in 38% of all United States counties, no legal assistance is provided for persons of little or no means accused of major crimes. I dwell on the negative side of his findings because it is there we must concentrate our efforts.

Because of the increase in our population, the ability of established Legal Aid organizations to meet the full need in their communities has risen only from 51% in 1916 to 55% in 1947.

I am proud of the practical accomplishments of the Committee on Legal Aid of the American Bar Association and of the various state bar associations in fostering the growth of legal aid. Top quality leadership is coming to the fore. We have such persons as

Case and Comment
THE LAWYERS' MAGAZINE—ESTABLISHED 1894
AQUEDUCT BUILDING, ROCHESTER 14, N. Y.

EDGAR G. KNIGHT, *Editor*
GEORGE H. CHAPMAN, *Business Manager*

Advertising Representatives
NATIONAL PUBLISHERS REPRESENTATIVES, INC.
New York 17, N.Y., 114 East 47th Street,
PLaza 3-5171

¶ Case and Comment is published bi-monthly by The Lawyers Co-operative Publishing Company, Rochester 14, New York, and Bancroft-Whitney Company, San Francisco 1, California. The publishers are not responsible for the personal views of the authors of signed articles. Their publication is not to be deemed an indorsement of any position taken on any controversial question.

lawyers like Harrison Tweed, who is President of the National Legal Aid Association, like Chief Justice Arthur T. Vanderbilt of New Jersey, and like Orison Marden, Chairman of the American Bar Association Legal Aid Committee.

The most serious obstacle confronting organized Legal Aid work on both the civil and criminal side is financial. It is a troubling question as to where the funds should come—from the Bar, from the general public as a private charity or from local or state government, or from a combination of these, or from one or the other, depending on circumstances.

Lawyers Are Primarily Responsible

The responsibility for leadership in each community rests primarily on the lawyers. They will do well to consider what a default may cost them and the American people. A profession such as medicine or law is necessarily a monopoly, in a field which is forbidden to these who are not licensed to engage in the practice. In this respect the professions differ from business. No solicitation is permitted, and those who have not been granted the right to practice the professions are strictly excluded. This places on the professions a responsibility to the public, and if any professional group fails to meet the issue, they will discover sooner or later that the problem is being attacked by persons whose approach will be neither professionally competent nor in the public interest. The remedy will be imposed from the outside. The lesson which the legal profession has learned from the current difficulties of organized medicine is that the full need for legal services must be met on a professionally sound basis before the public become aggrieved.

The American Bar Association has pledged its resources to help meet this fundamental problem of justice for all. Nothing is more important than making justice easily accessible to every citizen. To the extent that we succeed we shall win public respect as no other bar activity can possibly do. This is our problem. I hope you will take it to heart—live with it—and preach it to your local judiciary and bar association. Nothing would help more to preserve our free institutions. "Justice for all" is more nearly attained in our great country than any place in the world. Certainly it is an American ideal beyond dispute. We now have the facts we need gathered and verified by the Survey of the Legal Profession. It is up to us all, lawyers and laymen alike, to act on the basis of these facts so that there shall be justice for all.

Calculated Risk?

Judge, looking at the docile husband: "What induced you to hit your wife?"

With a small shrug the little man answered, "Well, she had her back to me, she was bent over, the frying pan was handy, and the back door open. So—I just took a chance."—Tax Topics.

The Common and the Civil Law

A Scot's View

By THOMAS MACKAY COOPER

Lord Justice General and Lord President of the Court of Sessions of Scotland

Condensed from Harvard Law Review, January, 1950

ONE of the many debts which we owe to the German school of jurists of the 19th century is the distinction between lawyers' law and professors' law. The terms are self-explanatory. Since it is in active practice that my experience has been gained, it is from the standpoint of lawyers' law that I propose to discuss my subject: the influence of Roman and canon law in the modern world. The legal system which it has fallen to my lot to administer—the law of Scotland—occupies a special position amongst the legal systems of the modern world. These systems, as is well known, tend to fall into one or the other of two great categories, (a) the Anglo-American or common law systems, and (b) the Roman, civilian, or Franco-German systems. But Scots law sits on the fence, Roman in origin, doctrine, and method, but now largely infiltrated and overlaid by the later developments of Anglo-American law and by statutory changes enacted by a legislature predominantly English.

A seat on a fence may not be a very secure seat, but it offers the conspicuous advantage of a view on both sides of the fence. Half a civilian and a half a common lawyer, accustomed to thinking of law functionally as an applied science and not dogmatically as an aspect of sociology or of political philosophy or of the history of human culture and institutions, the practising Scots lawyer ought to be able to form some estimate of the comparative excellences of the two great rival juristic schools of thought and their adaptability to the needs of a changed and changing world.

When we speak of a continuing influence being exerted in the modern world by the Romanist and canonist legal tradition, what precisely is the nature of that influence? It is best to begin by stating what that influence is not. The truly significant part of that influence no longer resides in the conscious appropriation by Romanist systems of detailed doctrines or remedies borrowed from the *Corpus Juris Civilis* or the *Corpus Juris Canonici*. There was a time—and it lasted for centuries—when it was second nature to the lawyers of Scotland and of other countries which followed the civilian tradition to turn to Roman law (or what they thought was Roman law) for an answer to every question which their own system left unsolved. But that time has passed. Borrowing still

goes on; but under the impact of the new interest in comparative jurisprudence the lawyer in search of new ideas has now the civilized world at his disposal and is not confined to Justinian or Gregory IX. It is no longer in the provision of ready-made rules and doctrines to fill the gaps in an imperfect legal system that the continuing and abiding influence of Roman and canon law is to be found.

There are two points bearing upon this matter which are worthy of a brief digression. The first is that Roman and canon law have latterly shifted from the domain of lawyers' law. As a result of researches of modern scholars it is now known that few of the distinctive principles of Roman law were not fundamentally transformed during the centuries throughout which the law of Rome was slowly evolving, and many of them have substantially changed their accepted content within living memory.

The second point is related to the first. The Roman law which deeply affected the Romanist systems during their formative period was Roman law as our forefathers accepted it at second or third hand from the civilian commentators of the 17th and 18th centuries, and the civil law as taught by them was conceptual in a sense that the law of Rome never was. The canon law which has left its mark upon the law of Scotland and other kindred systems is the 12th and 13th century law of Gratian's *Decretum* and Gregory's *Decretals* and the practice of the Curia Romana and its "judges delegate" in the halcyon days of Pope Innocent III.

This attitude is not so painfully unscientific as would at first sight appear. When the architects of a legal system are looking around for new material with which to fill in the blanks in their native legal philosophy, it matters little where the chosen principles originated, provided they are capable of being usefully adapted to meet the needs of the situation.

What then is the real essence of the contribution which has been made, and is still being made, to modern law by the civil and canon law? In the last analysis it is nothing more and nothing else than idiom of legal thought and a guiding habit of mind—and not merely of legal thinking but of philosophic thinking and scientific thinking as well. The distinction may be put in many ways. A civilian system differs from a common law system much as rationalism differs from empiricism or deduction from induction. The civilian naturally reasons from principles to instances, the common lawyer in precedents; the first silently asking himself as each new problem arises, "What should we do this time?" and the second asking aloud in the same situation, "What did we do last time?" The civilian thinks in terms of rights and duties, the common lawyer in terms of remedies. The civilian is chiefly concerned with the policy and rationale of a rule of law, the common lawyer with its pedigree. The in-

stinct of the civilian is to systematize. The working rule of the common lawyer is *solvitur ambulando.*

The above is, of course, a deliberate overstatement of the position. But in the eyes of those who are in working contact with both the civilian and the common law tradition, the difference is unmistakable and persists strongly to this day, making itself felt not only in the fashioning of new law but in the day-to-day work of the courts, though the gulf which separates the two juristic methods has notably narrowed in the last half century.

Eminent representatives of the common law systems have recently laboured to minimize, if not to efface, the root distinctions between the civilian and the common law traditions by cataloguing the similarities in result which have been achieved by the two schools of legal thought in certain chapters of law. I can only record the personal conviction that the differences in method are fundamental and far more significant than the apparent similarity of the end products of widely different processes of thought. No doubt the similarities prevail once you get back to the basic concepts common to all mature jurisprudence. But that is professors' law; and those who labour in the humbler field of lawyers' law become very sensitive to the difference in the legal climates which prevail in a civilian and in a common law state.

The most important and widespread product of the civilian legal tradition is, of course, codification. The Anglo-Saxon is instinctively hostile to codification. The Latin is instinctively enthusiastic for codification. The Germanic and Slav races began by being suspicious, but were soon won over to the Latin side. The effort to codify, so characteristic of Romanist systems, is the natural product of the civilian method of thought, which always aims at reason methodized and presented systematically and at the application of rationalistic science to law.

Whatever the abstract merits or demerits of codification, it is undeniable that it is the systems codified and applied on the civilian principle which have spread far and wide throughout the modern world as a result of voluntary imitation and free adoption, and they have carried with them the Roman idiom of thought into half the civilized world. Anglo-American common law, by contrast, has been imposed by conquest and has followed colonization, but it has rarely or never been freely chosen by any modern state. Even in the United States, the domicil of choice of the common law, the civilian method of approach has recently found remarkable expression in the unofficial Restatement of the Law, in much of which Scots lawyers feel perfectly at home—far more so than in the Reports of the English Chancery Division.

On the other hand, the most distinctive practical manifestation of the common law tradition is the doctrine of the individually binding precedent,

still conspicuous in its most rigid form in England. The doctrine formed no part of the classical law of Scotland but crept in unobserved some 150 years ago, and we are now helpless in its suffocating grip. Up to a point we can still mitigate its rigour by submitting doubtful decisions for reconsideration by a court of seven or even thirteen judges; but that expedient is of no avail if the case is carried to the House of Lords, our final court of appeal in civil cases.

Everyone will freely admit that in judicial administration a very large measure of consistency must be secured in order that the law affecting any given situation may be reasonably predictable. The utmost respect will always be conceded to a tract of similar decisions, or the settled opinion of jurists of weight, or the accepted practice and understanding of the profession. But such principles are far apart from the superstitious fetish of ancestor worship which inspires the rigid rule of the individually binding precedent. For practical reasons, if for no other, the rule is bound to be abandoned soon, because the crushing weight of centuries of law reports, digests, and indices has become all but overwhelming, and is in fact increasing every year. In the eyes of the civilian the common lawyer has tried to make his professional life too easy by excessive reliance upon precedent and the ascription of infallibility to

"So you're the guy who said 'with me representing you, you've got nothing to worry about'!"

hierarchies of judges down the ages. The attempt has failed, and its abandonment will be joyfully received in Scotland by those who are ashamed to have to decide cases upon grounds with which they disagree simply because their remote judicial ancestors have decided another case long ago upon a rationale which it is impossible to distinguish. All legal systems require a cement to bind them into a coherent whole; and the question which the common law systems will very soon have to face is whether a better cement than rigid precedent cannot be found in more codification and in methodized reasoning from clear principles in accordance with the civilian tradition. The judge should not be the parties' oracle, but he must be something more than an animated index to the law reports.

An important question for every lawyer today is which of the two contrasted methods of legal thinking should dominate the future. My belief is that the world of the future will be ruled to an increasing extent by codes administered on the civilian rationalistic principle, and that our successors will someday look back upon the great experiment of the common law as a brilliant improvisation, which served its day and generation and was then assigned an honoured niche in the Valhalla of governmental expedients.

The reason, I suggest, is tolerably clear. In the spacious and leisurely days of the 19th century, when the dominant conception was the adjustment of private interests and not the regulation of state and social rights and obligations, it took judge-made common law all its time to keep abreast of the growing needs of a developing society. Today, whether we like it or not, the old outlook has gone never to return, and the individualistic background of the past is being swiftly replaced by transformed conceptions of social functions and state interests. The age is one of association in vast units aiming at the mass production of social results. The individual citizen is losing his identity. Statute and regulation, once the exception, are now the rule. Private law is receding all along the line and public law is taking its place.

Fundamental transformations like this cannot be worked out empirically by the Anglo-Saxon method with its reliance upon slowly developing tracts of judicial decisions evolved with infinite caution by generations of elderly and timorous judges conditioned by Victorian ideals. Even if they could, many governments of the day have already made it plain that they have other ideas on the subject. Vast regions hitherto sacrosanct to the law courts have recently been taken out of their hands and entrusted to organs of the executive or administrative branches of government. We lawyers do not like it, but it must be so. Now that society is being forced by the pressure of relentless circumstances to assume a new look, it is inevitable

that positive political and economic enactments should acquire increasing predominance in the definition and regulation of legal rights, and that the views of well-meaning judges, who lived and worked without dreaming of the situation which confronts us today, should be deprived of the verbal inspiration too often conceded to their casual utterances.

Under conditions such as these it is of supreme importance for the preservation of what remains of the last bulwark of individual freedom, the rule of law, that the transition should be accompanied by a conscious return to the civilian methods of legal thinking, if we are to avoid the ultimate disaster of witnessing our systems of law replaced by the opportunism of arbitrary dictatorships. This at least seems incontrovertible, that the lawyers of every modern state must recognize and take up the challenge presented to them by the social and economic revolution which is upon us and must not lag one inch behind the demands of a progressive society. What form these demands may yet take we cannot foresee, but they will certainly be demands for something different from what the legal profession has been supplying for generations. Public respect for law, without which law cannot exist and civilization itself is threatened, depends upon the law's ability to satisfy the average man's feeling for common justice visibly done; and we may have to forget a lot and discard much of our old legalism if we are to satisfy this test. The civilian will have to abate something of his worship of the Roman genius for jurisprudence, unexampled as that genius was; and the common lawyer will have to recognize that his methods and their fruit are not necessarily the final perfection of human wisdom. We shall need both the civilian and the common lawyer to tide us over the great transition; but if we are to preserve an even keel in the storms which are breaking, we shall need above all the ballast which only the civilian method of legal thinking can offer.

It's His Constitutional Right

The following dialogue occurred between the Court and an accused who appeared before him without benefit of counsel.

Court: Do you wish me to appoint a lawyer for you?

Accused: No, sir. Every time I've had a lawyer before I've wound up in the clink. This time I'd like to throw myself on the ignorance of the Court.—The Shingle.

The Malingerer

By

ROBERT G. PAYNE
of the Dallas, Texas Bar

"HAVE you ever sustained a previous injury to your back?" "No, Sir."

"Have you at any previous time *claimed* an injury to your back?" "No, Sir."

"Have you ever filed a law suit alleging an injury to your back?" "No, Sir."

"Have you ever been paid any money because of any claimed injury to your back?" "No, Sir."

There had been no eyewitnesses other than the plaintiff; but he had been preceded on the stand by two doctors who told the jury that his back had sustained a recent injury that was serious and permanent. They had produced X-rays to support their testimony. They were well dressed, well educated, and had appeared before a sufficient number of juries to know how to testify convincingly. Backed by their evidence, the plaintiff, a man well along in years, testified confidently that he had hurt his back during his latest employment and that he had never been injured before.

But he was a malingerer. He was lying about hurting his back, and by his lying was seeking to extort as much money as possible from the insurance company which covered his employer.

The pattern is a familiar one. The smart damage-suit lawyer tries to get his client to tell him of any previous claim or injury, for he knows he can recover just as much by proving an aggravation of a previous injury. But the malingerer is suspicious and cagey; he knows his back is not injured now, so he certainly is not going to admit any previous claim or injury to his back, even to his lawyer. And as to admitting a previous claim or injury in open court—that insurance lawyer must think he is crazy! That particular bit of stupidity is perhaps the principal key to the successful defense of malingerer cases.

In the case under trial, wherein the above-quoted testimony was elicited, the medical evidence would, as usual, be pretty much of a standoff. We had two of the best doctors in the business, and, having examined the plaintiff carefully, their testimony would be to the effect that they could find no injury to his back. But it is difficult for a jury to tell which medical opinion is correct. And X-rays mean next to

nothing to jurors. The plaintiff's doctor points to a little clouded spot on the film and says that it demonstrates a serious injury. The insurance doctor says that the clouded spot is not, in his opinion, significant. But he is an honest man and therefore he is less dogmatic and positive than the plaintiff's doctor, for he knows that he is not dealing with a matter that can be reduced to a mathematical certainty. A smart plaintiff's lawyer can always get an honest doctor to admit that he might be mistaken. The ordinary plaintiff's doctors had testified in many lawsuits; but our physicians likewise would have to admit that they had represented a number of insurance companies. So the jury would be confronted with directly conflicting testimony from so-called experts; and it is only natural that it would be confused and uncertain.

Do not delude yourself for a minute that a malingerer or his lawyer finds it difficult to get the kind of testimony that is needed. In the first place, the doctor's fee for appearing in court is high. In the second place, a doctor must base his opinion largely upon the symptoms described by his patient. If the latter says his back hurts and that he cannot work, it is normal for the physician to assume that his patient is telling him the truth. Nine times out of ten he is. It is not easy for the doctor himself to detect the malingerer. Some do not try.

Another important psychological factor: The jury knows that if it makes a mistake in favor of the plaintiff and erroneously finds against the insurance company, the latter will be able to pay the judgment without greatly taxing its resources. On the other hand, if the jury makes a mistake in favor of the insurance company—if the plaintiff really has a permanently disabled back, but the jury finds to the contrary—it will have grievously and irreparably damaged the plaintiff. What would the jury do under such circumstances?

So the plaintiff has reason for his confident front when he testifies that this is the first injury he has ever sustained to his back. Furthermore, he has already so testified in his oral deposition, taken sometime before the trial; and having once lied about the matter, he will continue to swear himself black in the face.

In some twenty-five years of defending insurance companies and railroads, I have stubbornly stuck to one theory: that in a malingerer case, the jury *must* be convinced that the plaintiff is an outrageous liar and, if possible, a disreputable renegade. All of the rest of the trial is, in most instances, of minor significance.

The particular case on trial was an unusally tough one. Our investigators had hunted high and low for leads without success. The plaintiff took to crutches the day after the accident, which is sometimes helpful—but a constant watch merely proved that he was always careful to use them. He lived a long distance from the county

in which the suit had been filed, and he had been mixed up with his fifteen-year-old niece in a flagrant morals case; but the local District Attorney could not get the girl to testify and failed to obtain a grand jury indictment. We were so convinced that he was a fraud, and a vicious one at that, that we spent a lot of money on motion pictures—but no luck.

Finally in desperation, with the trial date fast approaching, we decided to go back into a railroad file which we had passed up earlier, and for good reason: the claim had been closed 25 years before, the first name of the claimant was different from our man's, and only property damage had been involved. But we matched the file against the plaintiff's oral deposition and found that the railroad accident had occurred in Bowie, Texas, about the time that the plaintiff lived in nearby Wichita Falls. This was a flimsy lead; but it was a good day for a ride anyway, so we drove up to Bowie. But we found nothing of value at the Montague County Court House. Files that old (25 years) often disappear.

There was an old District Court docket sheet recording a suit against the Rock Island Railroad, but no details. Well, we were in Bowie anyway, the coffee shop at which we stopped for a few minutes was just opposite the office of Benson & Benson, and as they had the reputation of being fine defendants' lawyers we thought they might represent the Rock Island. This turned out to be correct. But old Judge Benson had troubles of his own and could not remember a more or less insignificant property damage suit which had been dead and buried for 25 years. He was kind enough to give his open sesame to his office files, but after a couple of hours' search we gave up and went back for a last cup of coffee before hitting the road for Dallas.

While we were sitting at the counter trying to figure out how much we were going to have to pay, Judge Benson came in with a dilapidated court envelope. The only thing it contained was a petition, yellow with age. The Rock Island was the defendant. The plaintiff's first name was still wrong, but his middle name was the same as our man's. We began to get excited!

Judge Benson took us over to the local hospital. Dr. Wright's file was meager also, but it contained a history given by the patient—the first thing the doctors get. This particular patient had come in complaining of an injury to his back! He had been working for a construction company in Wichita Falls, the same company that our man had testified in his deposition he had worked for 25 years before. The ages fitted. An automobile had been hit by a Rock Island train. The doctor recognized his own handwriting, recording briefly that his back examination was negative.

Back in his office, Judge Benson, aided by the information obtained from the hospital file, found his recol-

lection of the case returning. Two witnesses had seen the claimant stop his car on the track several minutes before a train was due and watched him as he stood under a tree 50 to 74 yards away from the track while the train destroyed his mortgaged car. Then the claimant had laid down by the track. Confronted, 25 years before, with the testimony of the two eyewitnesses and the adverse opinion of Dr. Wright, the plaintiff had been glad to take the nominal amount which the Rock Island had offered him.

The more Judge Benson thought about the old deadbeat trying to defraud his client, the madder he got. He dictated a letter to the Rock Island and a few days later obtained a photostat copy of the release. The signature matched the one on our man's deposition! And that old yellowed copy of the petition against the Rock Island! If you have ever read a bogus petition, you know that a plaintiff's injured back, as described therein, is so broken, scarred, torn, mangled, lacerated and completely and irreparably damaged that there is no chance for the plaintiff ever to walk again. The petition even says so.

Both Judge Benson and Dr. Wright agreed to attend the trial free of charge to see whether they recognized the plaintiff. He was tall, gaunt, ugly, with a permanent scar on one side of his face. From a safe distance in the back of the courtroom, both men identified him easily.

So it was not without some degree of confidence that we had him swear over and over again that he had never had a previous injury to his back, that he had never made a previous claim based upon such an injury, that he had never been in a hospital claiming to suffer from his back, had never filed a suit nor received any money because of any previously alleged injury to his back.

Fine-looking Judge Benson and respectable and emphatic Dr. Wright pulverized him—not to speak of the hospital records, the release containing his signature and that verbose and most eloquent petition! Despite the conflicting medical testimony and the plaintiff's crutches, the jury returned a verdict against him in less than five minutes.

There may be better ways of getting the job done; but so long as I can convince a jury that a malingering plaintiff is an unmitigated liar, I will be reasonably content.

Legal Aid for the Queen of Sheba

A woman calling herself the Queen of Sheba arrived at the Philadelphia Legal Aid Society with a timely royal problem; she was about to be evicted for non-payment of rent. When the Society got her an extension she presented to the staff lawyers a scroll dubbing them knights of her kingdom.

A few days later the queen returned to announce that from then on every Thursday would be known as "Legal Aid Day" in the Kingdom of Sheba.—*Brief Case.*

The Credit Experience of Thomas Jefferson as a Lawyer...

By Dr. W. C. PLUMMER
Professor of Economics,
University of Pennsylvania, Philadelphia, Pa.

• Reprinted from Credit World.* September 1951.

THOMAS JEFFERSON began the practice of law in February, 1767, before he had reached his twenty-fourth birthday and continued to practice for the next seven years. It is with the credit given by him to his clients in connection with the legal services rendered to them that this article is concerned.

Jefferson had a very large law practice considering the fact that he was a young man just starting in the profession and also that this was just one of his occupations during these years. He had come into his inheritance when he came of age and was engaged as a planter at the same time that he practiced law. He likewise had responsibilities in the management of the estates of his widowed mother and his sisters and younger brother. He was a member of the House of Burgesses for Albemarle County beginning in 1769. The building of the mansion on Monticello, the little mountain across the Rivana from Shadwell, the family home, was started during this period.

That Jefferson had as much legal business as he could attend to is indicated by the fact that when Robert Carter Nicholas who, according to one writer, "had enjoyed the first practice at the bar," retired in 1771, he wanted to turn over his law business to Jefferson. Jefferson was unable to accept the additional business, except for the time being, and later it was turned over to Patrick Henry.

The names of many of the members of the most prominent families of Virginia are found among Jefferson's clients. On June 14, 1768, which was the second year of his practice, he writes in one of his notebooks that: "The Honble Wm. Byrd retains me generally." At the other extreme are some clients who otherwise are lost to history such as the one of a mulatto whose case he took without fee. The mulatto was suing for his freedom. He was being held in servitude because his grandmother, also a mulatto, had been bound by the law to serve until the age of thirty-one and during her servitude had been delivered of the mother of Jefferson's client. Jefferson lost the case but no lawyer could have done more for a client regardless of the size of the fee.

Jefferson's case book shows that he was employed in 949 cases before the General Court of Virginia during the years of his practice and this was not

*Official publication of The National Retail Credit Association, Executive Offices, St. Louis, Mo.

"These specialized record forms efficiently organize your PRODUCTIVE TIME"

The DAILY LOG FOR LAWYERS

Logical, practical, easy-to-use record forms act as "headquarters" for all data necessary to plan your work for maximum returns in 1952.

- Serves as an appointment book. Provides a place to record your trial dates, brief deadlines, every future engagement.
- Affords a convenient place to record all services and charges connected with your clients' accounts.
- Tells you the incompleted business in your office at any time.
- Classifies your work and fees for comparative earnings in the different branches of your practice.
- Provides you with vital monthly and annual summaries of fees collected, new business, overhead, productive hours, plus many other cost-analysis figures vital to the efficient management of your practice.

The DAILY LOG fills a long-felt need for a concise record system tailored specifically for the bar. Over 400 8½ x 11 looseleaf forms fit any standard three-ring notebook. Included are daily pages dated for 1952, rosters of business, dockets for litigation and probate work, cash receipts and expense form, payroll, annual report.

Each form was developed and designed by a successful practicing attorney. The Daily Log will provide you with the basic facts necessary for efficient practice management . . . help convert your cases into fees. COMPLETE SET OF FORMS — NO BINDER — WITH DAILY PAGES DATED FOR 1952 — $6.50.

Postpaid if check accompanies order

SATISFACTION GUARANTEED

SAMPLE PAGES ON REQUEST — NO OBLIGATION

Top quality Fabrihide binder. Three rings, trigger operated, one inch capacity, beautifully embossed with your name in gold. RING BINDER ONLY — NO FORMS INCLUDED — $4.00.

COLWELL PUBLISHING COMPANY

211 UNIVERSITY AVE., CHAMPAIGN, ILLINOIS

the whole of his practice. For example, in 1771 when he had 137 cases before the General Court, he also was retained as attorney or counsel in 293 additional cases during that year. It is said that both by training and temperament Jefferson was better fitted for practice before the General Court. However, during the years of his practice he rode the circuit of county courts and had cases at one time or another in forty or more of them.

The total of fees charged by Jefferson in the first year of his practice, from February 12, 1767, when he undertook his first case, to the end of the year was, £293.4.6. His total receipts during the year were only £43.4.1 and the amount outstanding at the end of the year was thus £250.0.5.

Jefferson's volume of business was greatest in 1770 when the fees charged totaled £521.5.1. His collections during that year on this amount and the balances outstanding from previous years were £213.6.11. The total fees charged by Jefferson for the seven years and seven months of his practice were £2507.8.4. His total collections on this amount were £1135.7.0 and the balance outstanding was £1372.1.4.

Jefferson gave up the practice of law on August 11, 1774, at which time he transferred his business to Edmund Randolph. He assigned accounts totaling £519.3.2 to Randolph for collection. These apparently represented the accounts that were thought to be collectible and Jefferson estimated that about two-thirds of this total of £519.3.2 would ultimately be collected. The remaining accounts, many of which had been outstanding from the early years of his practice, apparently were considered uncollectible.

It would appear, therefore, that a total of something over £1,000 was never collected. Jefferson's bad debt loss, based on his total legal business, was thus 40 per cent. And it can be seen from the table below that he had to wait a long time on the average for the money that he did get.

That other lawyers had trouble col-

Fees Charged, Collections and Outstanding Balances of Thomas Jefferson as a Lawyer During the Years of his Practice

Year	Fees Charged			Collections			Balance Outstanding at End of Period		
	£	s	d	£	s	d	£	s	d
From Feb. 12, 1767	293.	4.	6	43.	4.	1	250.	0.	5
1768	304.	8.	5	71.	6.	0	483.	2.	10
1769	370.	11.	0	147.	3.	0	706.	10.	10
1770	521.	5.	11	213.	6.	11	1014.	9.	10
1771	280.	12.	0	154.	10.	8	1140.	11.	2
1772	349.	5.	3	167.	19.	11	1321.	16.	6
1773	331.	12.	0	257.	4.	9	1396.	3.	9
To Aug. 11, 1774	56.	9.	3	80.	11.	8	1372.	1.	4
Total	2507.	8.	4	1135.	7.	0	1372.	1.	4

Compiled from the Fee Book of Thomas Jefferson, Photostat in Library of Congress, original in Henry E. Huntington Library, San Marino, California.

lecting their fees is indicated by the fact that on May 20, 1773, six lawyers, including Jefferson, Patrick Henry, Edmund Pendelton and John Randolph, inserted an advertisement in the Virginia Gazette saying that:

"On serious consideration of the present state of our practice in the General Court we find it can no longer be continued on the same Terms. The Fees allowed by Law, if regularly paid, would barely compensate our incessant Labours, reimburse our expences and the losses incurred by Neglect of our private affairs; yet even these Rewards, confessedly moderate, are withheld from us, in a great proportion, by the unworthy Part of our Clients. Some regulation, therefore, is become absolutely requisite to establish Terms more equal between the Client and his Council. To effect this, we have come to the following Resolution, for the invariable Observance of which we mutually plight our Honour to each other:

"'That after the 10th day of *October* next we will not give an opinion on any Case stated to us but on Payment of the whole Fee, nor prosecute or defend any suit or motion unless the Tax, and one-half of the Fee, be previously advanced, excepting those Cases only where we choose to act gratis; and we hope no person whatever may think of applying to us in any other way. . . .'"

Jefferson's legal business, which had decreased in the last few years, declined even more after the new credit terms went into effect and soon thereafter Jefferson retired from the practice of law.

It was not the discouraging credit experience, however, that caused Jefferson to give up the practice of law. More and more of his time during the last years of his practice had to be given to personal matters. When Jefferson married, January 1, 1772, he had an estate of 5,000 acres, "all paid for." His father-in-law died in May, 1773, and Jefferson, who was one of his executors, was required to spend a great deal of time in helping to settle the estate. Mrs. Jefferson inherited a large estate from her father and the responsibility for managing it as well as his own fell to Jefferson.

Jefferson described his wife's inheritance by saying: "The portion which came on that event [the death of her father] to Mrs. Jefferson after the debts should be paid, which were very considerable, was about equal to my own patrimony, and consequently doubled the ease of our circumstances." Then, too, public affairs, particularly the growing trouble with the Mother country which became acute in 1774, occupied his thoughts and took his time. It was less than two years after he gave up the practice of law that the thirty-three-year-old Jefferson wrote the Declaration of Independence.

In colonial times, collections were generally slow and bad debt losses high but it would appear that even for the times, Jefferson was a very lenient creditor and suffered accordingly.

AMERICAN BAR ASSOCIATION SECTION

The publishers of Case and Comment donate this space to the American Bar Association to permit it to bring to our readers matters which the Association deems to be of interest and practical help to the general practitioner.

THE American Bar Association's 1951–52 program is well under way. Unofficial reports to ABA Headquarters and President Howard L. Barkdull indicate that the various sections and committees are hard at work toward the accomplishment of the six-point platform adopted by the House of Delegates at last September's New York meeting. But much remains to be done.

Edward B. Love
Activities Director
American Bar Association

This six-point program is in reality a statement of the long-range objective of the ABA—goals toward which the Association must continually strive. These objectives, as developed by the Committee on Scope and Correlation of Work, are set out in the reprint of President Barkdull's speech "Justice to All" on page 3 of this issue of Case and Comment.

One of the bulwarks of the Association in the carrying out of the six-point program is the new Director of Activities, Edward B. Love, who has been appointed by the Board of Governors to this important post. The Board authorized the employment of a Director to serve under the President and the Board at its Washington D. C. meeting in May of 1950.

Former President Harold J. Gallagher, in announcing the creation of this new office said: "The Director will act as an assistant to the President and, in cooperation with the Chairmen of the Committees on Bar Activities, Public Relations, Regional Meetings, American Citizenship, Legal Aid, and Lawyers Reference Plan, and the Section of Judicial Administration, will assist them in carrying out their respective programs. He will also perform such other duties as may be assigned to him by the President and the Board of Governors.

"This is a great forward step and a necessary one. The work of the Association has grown so much that it is impossible for any one person to be responsible for all the tasks of administrative detail involved. To correlate the programs of the various Sections and Committees of the American Bar Association with the state and local associations, facilitating the interexchange of information, to handle the public relations program, the regional meetings, American Citizenship pro-

gram, Legal Aid, Lawyer Reference Service Plans and the vitally important program of the Section of Judicial Administration requires the full-time work of someone besides the president and volunteers."

With Mr. Love's knowledge of the problems of the practicing lawyer, as well as those of bar associations, he has a unique opportunity to make a real contribution to the profession.

ABA News in Brief

Issuance of a quarterly Citizenship Bulletin, printed in permanent form by the American Citizenship Committee, has met with universal approval . . . the new Bulletin, which replaces the mimeographed monthly Citizenship Bulletins, is far more readable and usable as permanent reference material . . . these will continue to be distributed without charge to the president and secretary of each state bar association and leading local associations, and to the chairmen of state and local Citizenship Committees. Every association is being encouraged to form a Citizenship Committee . . . the work of these committees is vital, and much help is available from the ABA.

Another landmark in the ABA efforts in the preservation of the American type of representative government is the brief prepared by the Committee on Communist Tactics, Strategy and Objectives . . . the brief, entitled "Communism; Marxism—Leninism, Its Aims, Purposes, Objectives and Practices," has been the subject of many favorable newspaper editorials . . . copies are being distributed to each member of the Association . . . additional copies on request.

Practical aid and assistance to local bar associations—and the bar—is being prepared by the Committee on Public Relations . . . a comprehensive PR Manual is soon to be distributed and a bi-monthly bulletin is in the mails . . . the manual and bulletin contain selected public relations plans and programs developed by both legal and non-legal groups, together with pamphlets, radio talks, sample advertisements and much "how-to-do-it" data.

Two new Regional meetings are on the 1952 agenda . . . lawyers in the Ohio Valley Region (Kentucky, Illinois, Indiana, Ohio, West Virginia and Michigan) will meet in Louisville, Kentucky, on April 10, 11, and 12 . . . and on June 17th through 20th, the Northwest Region will hold its bar meeting at Yellowstone National Park . . . the Northwest Region comprises Colorado, Utah, Montana, Idaho, Wyoming, Oregon and Washington.

Non-legal Definitions

Middle Class: Those who manage to live in public as the rich do, by living in private as the poor do.—Wall Street Journal

Moron: Something which in the wintertime, girls wouldn't have so many colds if they put.—Kroehler News

The Impact of the Lawyer on Advertising*

By E. B. WEISS

Director of Merchandising
Grey Advertising Agency, New York

Reprinted from Printers' Ink, October 5, 1951

THE impact of the lawyer on the business of advertising has yet to be fully appreciated by advertising men.

Of course, advertising agencies with clients who insist that advertising go through the censorship of the legal department do plenty of molar gnashing. But that is really one of the minor shadows the lawyer throws over the advertising scene.

Much larger is the shadow the lawyer casts over advertising as he sits on the board of directors. In this position he frequently casts a vote on the advertising budget. That vote is not always informed or enlightened!

In our largest corporations, this situation is not too serious. Here, the lawyer's vote may be merely one out of a dozen or more. Moreover, in these large organizations the advertising budget is not usually a matter for decision by the board of directors.

But hundreds of our medium-sized and small advertisers—advertisers with budgets running from $100,000 to $2,000,000 annually—operate under organizational and corporate charts that in practice make the board a part of management. These boards may consist of three to six or eight members. Not infrequently, two or even three board members may be lawyers—with, of course, a banker also among those present.

Obviously, in these organizations—and they very likely take in the majority of national advertisers—the lawyer vote is of vital importance. Where there is no unanimity of decision, his vote may decide an issue—such an issue, for example, as the advertising budget. Indeed, it is not at all uncommon for the board to vote on the selection of an advertising agency—and here, too, the lawyer's vote may rule. When this happens, the board also passes on the advertising program—because it will examine a sifted assortment of speculative plans.

Now I am not about to observe that the lawyer has starved and frustrated advertising. A 6-billion-dollar business belies any such charge.

But too often the lawyer is the board

*Editorial note: This interesting commentary on the influence of lawyers on the advertising business is reprinted here because of the unlikelihood that many of our readers will see it in the original publication. Any comments will be welcomed by both CASE AND COMMENT and Printers' Ink.

member least informed on advertising policy and practice—with the banker sometimes running him a close second. In some instances, the lawyer himself recognizes his limitations; he simply goes along with the majority opinion.

However, in enough cases to be disturbing the lawyer—fortified with the oral eloquence that is not untypical of the legal profession—sways majority opinion on advertising budgets, programs, etc. When this sort of situation obtains, the lawyer is apt to function no more brilliantly as an advertising practitioner than an agency executive as a legal practitioner!

If there is a solution to this problem I've yet to hear of it. However, it strikes me that *Printers' Ink* could help if it were to conduct a subscription drive among lawyers with board connections. It also strikes me that advertising agencies would be well advised to send appropriate literature from time to time to board lawyers.

Most of these lawyers are astute, highly intelligent professional men. They take their non-legal responsibilities at board meetings just as seriously as their legal responsibilities. They welcome factual material that will enable them to arrive at sound decisions on all matters that come up for board decision.

When we advertise advertising—let's not forget the lawyer. His vote is needed; badly.

The Essence of Law

The essence of the law is that it falls on all equally. People can't pick and choose which laws they want to obey and which they want to ignore. If they are permitted to do that, then you have no law.— *Val Peterson, Governor of Nebraska.*

Judicial Accuracy?

After their appointment by Queen Victoria several judges joined in an address to the Queen beginning, "Conscious as we are of our own unworthiness for the great office to which we are called—"

"Wouldn't it be better," one of the judges interrupted, "to say, 'conscious as we are of one another's unworthiness?' "—H. J. HASKELL, *Kansas City Star.*

What I Know About Women Lawyers

By BERNARD EPSTEIN
of the New York Bar

THERE are some very strange critters floating about our austere legal edifices. They carry briefcases, bear harried countenances, and generally act as if they shared the burden of the world upon their shoulders with Atlas. Upon closer examination, one discovers that the above-mentioned spices belong to the female gender. You can tell by the fruit bowl and florist display chapeaux. The stares which they attract from the hard-boiled, wizened old-timers are slanderous per se. In addition to being downright insulting, these old-timers' faces display disbelief and apprehension. Their eyes become larger, their brows more wrinkled, and, as they quizzically scratch their respective heads, one can read their silent provocative question: "What is the legal profession coming to?"

As an answer to this query, and for the benefit of all concerned, I will endeavor to explain about these loquacious and learned daughters of Blackstone. After all, I am an authority on the subject—I married one of them. Yes, at the risk of dire consequences, ridicule and lifted eyebrows, I must confess that one of these creatures (a rather attractive one, I hasten to report) is my legally wedded spouse. The fateful meeting occurred in a New York law school. After due consideration of all facts and circumstances, we married and soon thereafter had our blessed event—the admission to the New York State Bar.

A more accurate approach to this issue of women lawyers can only be had if we recognize this one salient fact—women attorneys are lawyers! Let's make no mistake about that. They are full-fledged, one hundred percent counsellors-at-law. If it seems strange to you that I accent this point, it is for the following reason. When I tell someone that my wife is an attorney, the usual reaction is a benign smile. You know the type of smile that I mean—it seems to say, "Who is this guy trying to kid?"—or (even worse) "Isn't that too cute for words!" Their attitude bespeaks sweet forgiveness and charity. The most cruel and inhuman punishment for these skeptics would be to throw them into an arena with one of these legal ladies—the weapon to be argument on any subject at thirty paces. If they are not convinced after a few minutes that a woman attorney is a full-fledged law-

yer, I'll eat the Right Honorable Lord Chancellor's wig!

I have never won an argument at the expense of my learned wife. (Ed. note—What husband has ever won an argument period.) I have, more or less, resigned myself to the fact that I never will; but I still try. Only the other (otherwise peaceful) evening, we were discussing the pros and cons of a certain case entitled "Seashore vs. Mountains" vacations. I appeared for the plaintiff—Seashore. My adversary presented the case for the Mountains so well that I even had to concede the necessity of taking my mother-in-law with us to the Adirondacks! However, just to prove how benevolent all women attorneys can be to a defeated counsel, I was allowed three days' visitation rights to Jones Beach . . . if I paid all expenses.

Mrs. Eve J. Epstein
The inspiration for her husband's article

Everytime I hear the expression, "Don't underestimate the power of a woman", I have to chuckle at this gross understatement. At any rate, I will advise one and all—"Don't underestimate the power of a woman lawyer." The legal ladies have all the necessary qualifications and assets of their brethren in the legal profession plus the added feature—believe it or not—the fact that they are ladies. This fact can be exceedingly dangerous if overlooked by unsuspecting male adversaries. Their wiles and witchcraft may be employed to great advantage. They are marvelous tacticians in legal battles—having the natural intuition inherent in all women.

My wife was recently retained in a case which probably could have been decided either way. On the last day of trial, my wife and her unfortunate opposing male counsel were called into the presiding judge's chambers in order to discuss a possible settlement or adjustment of the matter. The opposing counsel, probably too engrossed in his argument, forgot the fact that my learned wife was a lady. He proceeded to the door of the judge's inner sanctum first, and practically slammed the door of the chambers in my learned wife's face. The reproachful look of the jury and the distinguished, gentlemanly judge—a member of an old and well-bred school, probably Harvard,—at this ungallant gesture, so unnerved the opposing counsel that he conceded to all of my learned wife's demands. Of course, the forgiving smile that the legal lady gave him probably unbalanced his equilibrium to an even greater extent. I could never learn whether she had planned the whole thing or not. She does possess perfect timing for those things. However, she has categorically denied any guilt. I am left with mere suspicion which she knows is not admissible as evidence.

The other night I had a dream which

was probably the result of overindulgence in food at a bar association dinner. I dreamt that my wife was on the witness stand, I was the prosecutor, and a smiling old gentleman who resembled Oliver Wendell Holmes recorded the following testimony:

Prosecutor: Do you swear to tell the truth, the whole truth and nothing but the truth?

Witness: (Singing) "I'm always true to you darling in my fashion." (My wife always did prefer musical extravaganza dramas)

Prosecutor: What is your age, madame?

Witness: Twenty-one plus . . .

Prosecutor: Plus what?

Witness: I refuse to answer on the grounds that the question violates my constitutional privileges.

After heated argument at the Bench in which Senator Kefauver took an active part, the court upheld the refusal to answer on the grounds that I probably would be incriminated and degraded when we returned home.

Prosecutor: Why does a woman become a lawyer?

Witness: For the same reasons that a man does—and not to find a husband in law school.

Prosecutor: I move that the answer be stricken from the record as not responsive, irrelevant and immaterial.

After consulting the various Codes of Procedure, the learned Court allowed the answer to stand on the grounds that there is nothing wrong with a girl trying to find a husband. The Court quoted the following decision in a famous case: "All women are looking for husbands—even the married ones!"

Prosecutor: Is it true that all women lawyers are homely?

At this point, my wife smiled at the jury, crossed her legs, and rested her case.

The jury deliberated for one minute, asked for her picture in a bathing suit to be examined as evidence in the jury room, and then returned a verdict voting her "Mrs. America of 1952."

When I awoke, the fragrant aroma of waffles and coffee greeted me, and I was ready to agree with the jury's verdict. In addition to being able to decipher the intricate machinery of our Civil and Criminal Codes of legal procedure, my wife's culinary art is not lacking. She is an excellent housewife in all respects, provided that I dispense with some of my crude humor and remember some of her pet peeves such as:

She doesn't like to be called "Portia" —a name given to women counsellors and orators since Shakespeare's "Merchant of Venice."

I must remember that not all women lawyers are unattractive.

There is absolutely no difference between men and women lawyers—except sex.

Lady lawyers do not use the fact that they are women to win their cases.

Any discrimination towards women attorneys is totally unjustified.

There is nothing wrong with a woman being a judge in any Court—including the Supreme Court.

All stares, snickering, ridicule, etc., directed towards women attorneys are downright ignorance.

Women attorneys are not better at legal paper work than legal trial work.

All women attorneys are not wonderful.

Women attorneys are not incompetent as wives and mothers because they are lawyers.

These peeves are not all inclusive of the things I should remember. In all justice to my learned wife, I declare that I do agree with her. Of course, I can understand the prejudices of my male cohorts—both lawyers and laymen. Being in the minority, the lady counsellors are more closely scrutinized by everyone. If, therefore, one of them does not act properly, the fault is apt to be spotlighted and exaggerated, and consequent aspersions cast which may not be warranted. We must remember that every group has its detractors whether it be a social, racial, economic or legal group. For the faults of a few, we should not castigate an entire group nor discriminate against them.

I have encountered women lawyers who were loud and unladylike. There are those in public offices who abuse the trust placed in them. There are those who strut around, acting mightier than their deeds warrant. In short, there are many who are not good representatives for the legal profession. However, I have also encountered male attorneys who can be placed in the same category. I have never investigated the proportion of creditable female vs. creditable male atorneys, but I am certain that the figures would not prove our ladies lacking in the ethical and moral qualities all attorneys should possess. Most of them understand their obligations as officers of the Court.

I have been very favorably impressed by our lady counsellors. Their behavior in our courts, their fair treatment of clients, their knowledge and knowhow, are comparable and, in my opinion, surpass the conduct of their male brothers. If I were a client, I would not hesitate to retain a capable lady counsellor in any kind of a case—whether it involved corporate law or murder.

You must give these ladies credit. They are in a highly competitive profession and have attained great success. They have been competing with men in what has been, and still is, a man's profession, and they have proven their abilities. They have not sacrificed the qualities which are necessary for good wives and mothers. The majority of them are married and have raised families anyone would be proud of, in addition to having established successful careers as lawyers, public servants and judges. I know many of them who have taken the leadership in their respective communities for many worthwhile causes. They are active in the cause of good government, charity, social and economic improvement.

Their legal training and executive ability are decided assets to any cause.

Surely, ladies like Anna Kross, Justine Polier, Doris Burn, Birdie Amsterdam, Agnes Craig, Frieda Hennock and Hilda Schwartz, to mention but a few, are people all lawyers and jurists are proud of. The many lady lawyers in legal aid work help thousands of poor persons yearly. The efficient lady counsellors in the corporation counsel offices, the lady assistant district attorneys, the congressladies, and those in practically all branches of our government, are women who have earned our respect.

Yes, I am willing to admit that I have a very high opinion of our lady attorneys—even though I married one. These "critters" who "invaded the sanctity of our sovereign courts" are as capable as men—and much prettier.

Early Pre-Conviction Pardons in Missouri

By JOHN R. HALL
News Editor, The Marshall, Missouri Daily Democrat—News

IN THE early decades of statehood, Missouri governors had authority in granting pardons equal to the royal prerogatives of the kings of England. The Missouri Supreme Court said so.

The governors could even extend clemency before conviction, freeing the accused by a mere dip of the executive pen.

Jim, "a man of Colour", was the happy recipient of such gubernatorial power after two years of trial vicissitudes that began at the February 1833 term of the circuit court in Saline County, Missouri. He was under grand jury indictment for killing a white man.

When the trial started at that term Jim pleaded not guilty and "puts himself upon the country". At that first trial and at two trials that immediately followed in April and July, same year, juries failed to come to an agreement as to Jim's innocence or guilt. The prosecutor took a rest at the November term by asking for a continuance in preparation for a new conviction effort in March, 1834. That jury, too, couldn't make up its mind about Jim.

In July the case was continued by consent of parties but not until Judge John F. Ryland had overruled the defendant's motion praying to be set at liberty. In November it was Jim who desired a continuance and got it and in March, 1835, both asked for the case to go over to the next term.

Meanwhile, between all those appearances of Jim in the Saline Court, spaced over a period of more than two years, he was taken 60 miles to Howard County because Saline had "no safe gaol". The itemized fee bills contain such entries as furnishing prisoner fire $3.70, furnishing horse to bring prisoner to court $1.50, turnkey's fee $1.50.

When Jim, in custody of the Sheriff, reported for the July 1835 term of court a new judge, David Todd, was on the bench. The record for that date shows this entry:

"The defendant, by his attorney, filed his pardon for the crime with which he is charged from the executive of this and asks leave to plead the same and the judge of the court, being the master and owner of the slave, a change of venue is awarded for that cause to Lafayette County in the fifth

judicial circuit and papers ordered sent with the record as the law rquires."

Throughout the Saline litigation, ten witnesses were kept under bonds of $200 each, including Thomas J. Boggs, who was bonded to produce Betsy, a slave, to testify against the defendant.

Jim got his freedom in Lafayette County, adjacent to Saline. The court record there reads:

"This day came the attorney prosecuting for the state and the defendant by his attorney and pleads and brings into court a full and free pardon from the governor of this State for the offense with which he stands indicted which being seen by the Court it is considered that the said pardon be allowed and that the prisoner be pardoned of said charge and go hence without day. Ordered that the following fees be allowed and certified to the auditor of this state. . . ."

The fees totaled $1,769.77.

A later prosecutor in another county didn't accept so readily a pre-conviction pardon by a Missouri governor and appealed to the supreme court. This attorney for the state didn't believe that Section 6 of Article IV of the first Missouri constitution, adopted June 12, 1820, at St. Louis, which was still effective, gave to the governor the right of pretrial clemency. The section read:

"The Governor shall have power to remit fines and forfeitures, except in cases of impeachment, to grant reprieves and pardons."

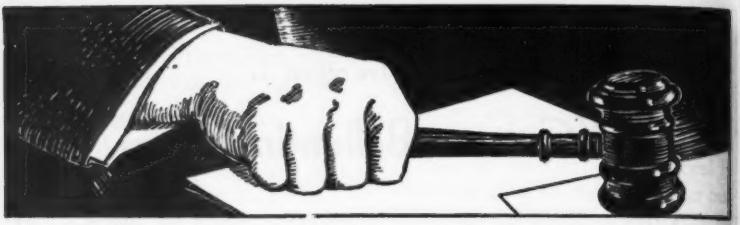
Prudence Woolery was indicted in Benton County for murdering her bastard child. She plead in bar of the indictment a pardon from the governor, which was allowed her. It was in this case (January Term, 1860) that the Missouri Supreme Court, in an opinion written by Judge Scott, compared the authority of Missouri governors with the regal power of England's kings. The court's decision (Missouri Reports 29, Page 300) reads:

"The constitution (Article 4, Paragraph 6) ordains that the governor shall have power to remit fines or forfeitures and, except in cases of impeachment, to grant reprieves and pardons. Thus it will be seen that, with a single exception, the power of pardon is absolute and uncontrolled and the governor possesses that prerogative in as ample manner as it is enjoyed by the kings of England. There it never was doubted but that the King could pardon before conviction. Blackstone says that a pardon be pleaded in bar of an indictment."

There is an old saying in Missouri judicial circles that a pre-conviction gubernatorial pardon offered a prosecutor one way of disposing of a stubborn case without losing any prestige.

Nice, If You Can Do It

It's easy to meet the cost of living. Just do as the government does—add 50% to your income.—*Pipe Dreams*, Universal Pipe Company.



Among the New Decisions

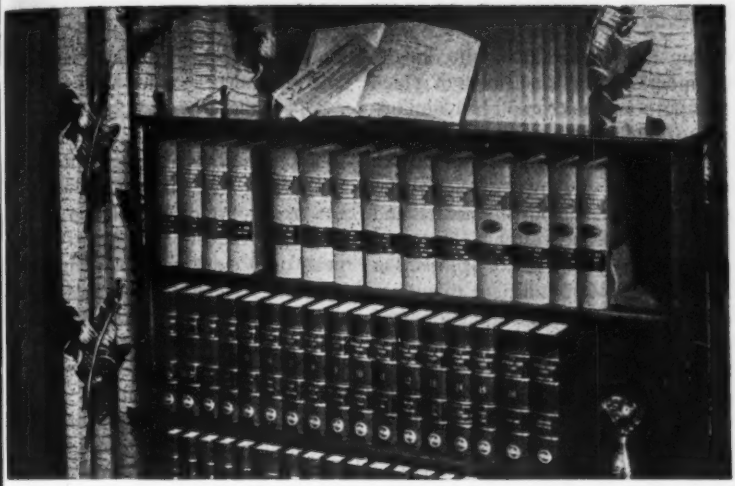
Accomplices — *question of law or fact.* In Ripley v. State, 189 Tenn 681, 227 SW2d 26, 19 ALR2d 1347, a prosecution for grand larceny and receiving stolen property, the appellant and one of his codefendants were convicted and the other codefendant acquitted. Testimony against the appellant had been given by the acquitted codefendant. The convicted codefendant testified that he was drunk and remembered nothing about the transaction and repudiated his signed confession, which, however, was ruled by the court to have been voluntarily made and was submitted to the jury as touching upon the guilt of the appellant, as well as his codefendant.

The Supreme Court of Tennessee, in an opinion by Chief Justice Neil, reversing the judgment for refusal to instruct the jury that defendant could not be convicted upon uncorroborated evidence of his codefendants, if in fact the jury found them to be accomplices, held that the rule requiring corroboration of testimony of an accomplice was not rendered inoperative by testimony of the appellant in his own behalf, or by the acquittal of the testifying codefendant; and that the question as to who are accomplices is one of law for the court where the facts as to witness' participation are clear and undisputed, and one of fact for the jury where such facts are disputed or susceptible of different inferences.

The extensive appended annotation in 19 ALR2d 1352 discusses "Question as to who are accomplices, within rule requiring corroboration of their testimony, as one of law or fact."

Alienation of Affections — *cause.* The action in Lankford v. Tombari, 35 Wash2d 412, 213 P2d 627, 19 ALR 2d 462, was based on two causes of action, one for alienation of affections, and the other for criminal conversation. It appeared in evidence that the defendant was a drugstore proprietor by whom the plaintiff's wife was employed for a time during the plaintiff's absence in the military service, and that the acts complained of occurred during such absence and after the plaintiff's return to civilian life.

Judgment on a verdict for $15,000 was affirmed by the Supreme Court of Washington, Department 2, in an opinion by Justice Mallery, which, con-



You see here the latest 15 volumes of the Lawyers' Edition of the U.S. Supreme Court Reports and *all* 17 volumes of the new U.S. Supreme Court Digest Annotated. They form the...

ECONOMY UNIT of L.ED.

...an Economy Unit designed to give you a tremendous savings in dollars.

Why not clip the coupon below for further details on how you can put these vital books on your shelf at remarkably low terms and an even more amazing low, special purchase price?

The Lawyers Co-operative Publishing Co.
Rochester 14, New York

Without cost or obligation on my part, please send me the details about your low-priced "Economy Unit" consisting of the latest 15 volumes of U. S. Supreme Court Reports and all 17 volumes of the U. S. Supreme Court Digest Annotated.

Name.....

Address.....

City.....*Zone*.....*State*.....

ceding that alienation of affections is an intentional tort an element of which is a purpose to accomplish a diminution of the spouse's affection, held that such purpose could be inferred from the seductive acts since, in the eyes of the law, a man intends the natural and probable consequences of his acts; and that evidence on the issues of intention and causation was sufficient to sustain denial of the nonsuit. Contentions of the defendant based on the wife's relations with other men and the absence of acts on his part to engender the wife's change of affections were rejected by the court which held that liability depended upon the actor's course of conduct being a cause, and not necessarily the sole cause, of the alienation, and that the element of causation was adequately defined in instructions stating that liability depended on a preponderance of proof that defendant was the procuring or controlling cause of the alienation, and that one who aids in causing the alienation would be liable.

The extensive appended annotation in 19 ALR2d 471 collects and discusses the cases in which the element of causation was considered by the courts in actions for alienation of affections.

Alimony — *trial court's jurisdiction pending appeal.* A writ of prohibition was sought in Finnegan v. Arnold, — W Va —, 55 SE2d 399, 19 ALR2d 700, to prevent enforcement of an award to the petitioner's wife of specified sums for maintenance and for traveling expenses between her home and her attorney's office pending an appeal by the husband from a decree granting the wife a divorce and alimony. The husband's contention that the appeal and supersedeas deprived the trial court of jurisdiction was rejected by the Supreme Court of Appeals of West Virginia, in an opinion by Justice Kenna, which held that in divorce matters a supersedeas is restricted to the decree sought to be reviewed, and that proceedings for allowances pending the appeal are separate and distinct therefrom.

The appended annotation in 19 ALR2d 703 is entitled "Trial court's jurisdiction as to alimony or maintenance pending appeal of matrimonial action."

Appeal — *of order discharging or vacating attachment.* In Swift & Co. v. Compania Colombiana, 339 US 684, 94 L ed 1206, 70 S Ct 861, 19 ALR 2d 630, the owners of cargo lost while being transported by sea brought a libel in personam in a Federal District Court against the owner of the vessel carrying the cargo and attached another vessel which respondent had previously transferred to a corporation formed by the respondent's officers, directors, and stockholders. The liability of the vessel to attachment turned on whether the transfer was fraudulent. The District Court, being of the opinion that the issue thus presented was not within admiralty jurisdiction, vacated the attachment.

The opinion of the United States

Supreme Court (Justice Douglas, not participating) delivered by Justice Frankfurter, holds that the requirement of finality did not preclude an independent appeal from the order vacating the attachment; that a court of admiralty has jurisdiction to determine whether a transfer of property subsequently attached as property of the respondent was fraudulent; that a foreign attachment is not dissolved by the subsequent appearance of the respondent; that the court in the circumstances of the case should have proceeded to determine the fraudulence of the transfer; and that the libelant should not, on the ground of more convenient forum, be remitted to the courts of a foreign country without assurance that respondents would appear in those courts and that security would be given equal to what had been obtained by the attachment.

The extensive appended annotation in 19 ALR2d 640 is concerned with the question whether an independent appeal may be taken, prior to final judgment, or an independent review obtained, of an order discharging or vacating an attachment or refusing to do so.

Automobile Insurance — *injuries incurred while alighting or entering.* In New Amsterdam Casualty Co. v. Fromer (Mun Ct App Dist Col) 75 A2d 645, 19 ALR2d 509, an action against an insurance company was brought under the clause of an automobile liability policy providing for medical payments in the event of a bodily injury sustained "while in or upon, entering or alighting from," the automobile. The plaintiff, after stopping his car on an icy highway to investigate a collision between his car and another, was struck by a third car while about six feet from and returning to his automobile for the purpose of entering the same.

Judgment for the plaintiff was reversed by the Municipal Court of Appeals for the District of Columbia, in an opinion by Chief Justice Cayton, which, expressly limiting the scope of its ruling to the facts of the case, held that "entering" a vehicle could not be interpreted to include the act of approaching it for the prospective purpose of entry.

A discussion of the "Scope of clause of insurance policy covering injuries sustained while alighting from or entering automobile" will be found in the appended annotation in 19 ALR2d 513.

Confession — *admissibility.* The defendants were prosecuted in State v. Bunk, 4 NJ 461, 73 A2d 249, 19 ALR 2d 1316, for murder in the first degree for the killing, during their armed holdup of a tavern, of a patron thereof by a bullet from the gun of one of the defendants.

Judgment entered on a verdict of guilty of murder in the first degree, without a recommendation as to punishment, was affirmed by the Supreme Court of New Jersey, in an opinion by Justice Oliphant, which rejected an assertion of error, among others, based

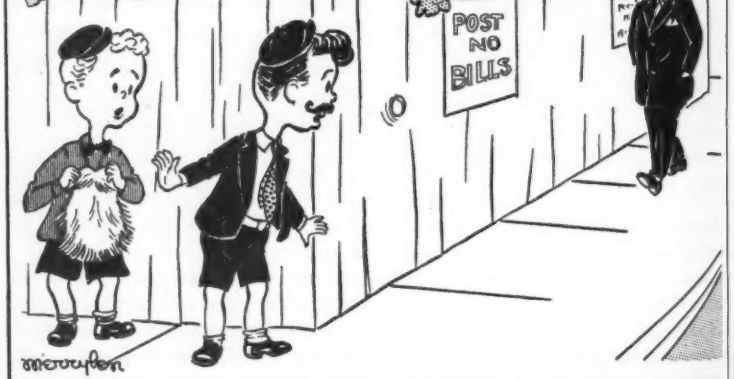
on the alleged erroneous admission of confessions.

Admission of the confessions was unsuccessfully objected to on the grounds that they were secured (a) by threats, beatings, and unremitting interrogation, (b) without advice as to constitutional rights of the defendants, and (c) while defendants were being held in violation of a rule requiring the accused to be arraigned before the nearest magistrate without unnecessary delay.

The "Admissibility of confession as affected by delay in arraignment of prisoner" is the subject discussed in the appended annotation in 19 ALR2d 1331.

Descent and Distribution — *nieces and nephews.* In Re Reil, 70 Idaho 64, 211 P2d 407, 19 ALR2d 186, a proceeding for the distribution of the estate of an intestate, it appeared that under the facts as stipulated the deceased was survived neither by issue, spouse, parent, brother or sister, but by nieces and nephews, the children of four deceased brothers and sisters.

A judgment providing for distribution per capita, and not per stirpes, was affirmed by the Supreme Court of Idaho, in an opinion by Justice Taylor, which held that distribution should be made to the nephews and nieces in their own right as "next of kin" under a section of the statute providing that,



"Hurry up and put on your disguise—I think I see a Truant Officer!"

"if the decedent leave neither issue, husband, wife, father, mother, brother nor sister, the estate must go to the next of kin in equal degree . . . ," rather than as representatives of their deceased parents under a section providing "if there be neither issue, husband, wife, father nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother and sister by right of representation."

"Descent and distribution to nieces and nephews as per stirpes or per capita" is the subject of the appended annotation in 19 ALR2d 191.

Divorce — *constructive desertion.* Desertion and cruel and inhuman treatment were the grounds for divorce set up in Griffin v. Griffin, 207 Miss 500, 42 So2d 720, 19 ALR2d 1423. It appeared that the defendant quit his teaching profession, settled on a farm which he refused to cultivate, permitted the home to become dilapidated and uninhabitable, sold the last of the livestock, and furnished insufficient food to his wife and children, so as to impair their health and compel them to seek sustenance from neighbors. The wife finally moved to a distant city where she worked for the support of herself and a mentally defective child. Express statutory grounds for divorce did not include nonsupport.

A decree for the plaintiff was affirmed by the Supreme Court of Mississippi, in banc, in an opinion by Justice Roberds, which held that the wife was entitled to a divorce on the theory of constructive desertion by the husband, which doctrine the court declared to prevail only in extreme cases.

"Divorce: Acts or omissions of spouse causing other spouse to leave home as desertion by former" is the title of the extensive appended annotation in 19 ALR2d 1428.

Drugless Healer — *malpractice.* An action for malpractice was brought in Kelly v. Carroll, 36 Wash2d 482, 219 P2d 79, 19 ALR2d 1174, against one licensed to practice drugless healing and his assistant by the patient's widow, as administratrix. The patient whose symptoms clearly indicated the probability, if not certainty, of appendicitis, and whose death was shown by an autopsy to have resulted from a ruptured appendix and peritonitis, was treated by the defendants by hot and cold packs, electrical and manual massages, and laxatives. Notwithstanding the progressively deteriorating condition of the patient, suggestions for calling in a doctor were vehemently rejected by the defendant drugless practitioner until too late to save the patient's life.

A judgment for the plaintiff was affirmed by the Supreme Court of Washington, in an opinion by Justice Mallery, which, taking the position that the defendant drugless practitioner was under a duty to send the patient to a doctor or surgeon as soon as the defendant ascertained or should have known that the patient had appendicitis, held that although one licensed to

practice drugless healing is not a doctor and rules of law pertaining distinctively to the latter are not applicable to the former, one not having a license to practice medicine and surgery but assuming to act as a doctor is liable for malpractice and is to be judged as if he were a doctor; that, although not an insurer of results in his limited field, a drugless healer will be held accountable where he steps out of his limits and treats a disorder for which, in the highest level of medical science, there is a generally recognized treatment beyond the scope of his license and ability. The act of soliciting the drugless healer's services with knowledge that he would not operate or advise an operation was held not to preclude recovery on grounds of assumption of risk or contributory negligence.

The "Liability of drugless practitioner or healer for malpractice" is discussed in the extensive appended annotation in 19 ALR2d 1188.

Evidence — *posed photograph.* It was unquestioned that the defendant in State v. Ebelsheiser, — Iowa —, 43 NW2d 706, 19 ALR2d 865, a prosecution for homicide, fired the fatal shot. Principal contentions of the defendant were that his act was justifiable self-defense or at most without malice aforethought. The killing occurred at a home to which the defendant, armed with the fatal weapon, had gone with his brother, and which was occupied by the defendant's widowed mother with whom her daughter and son-in-law, the victim, lived. The latter had secured the arrest of another daughter for an assault on his wife earlier the same day. Testimony of the wife and of the defendant and his brother conflicted as to the occurrences immediately preceding the shooting.

Judgment on a verdict convicting defendant of second-degree murder was affirmed by the Supreme Court of Iowa, in an opinion by Justice Mantz. Of particular interest was the support given by the court to the admissibility, where proper foundation has been laid, of posed photographs showing the room, furniture arrangement, and positions of the parties at the time of the tragedy.

The subject of the appended annotation in 19 ALR2d 877, supplementing an earlier annotation on the point, is the admissibility in evidence of photographs portraying an attempted reproduction of the scene of a crime or accident as recalled by witnesses, showing posed persons, dummies, or movable objects.

"Fair Trade" Law — *application to nonsigner as violation of anti-trust law.* The plaintiffs in Schwegmann Bros. v. Calvert Distillers Corp., 341 US 384, 95 L ed 1035, 71 S Ct 745, 19 ALR2d 1119, foreign corporations, obtained agreements with Louisiana retailers to sell their products at a minimum price. Although under Louisiana law these agreements were binding upon nonsigners, a retailer who refused to sign

such an agreement sold the plaintiffs' products at a cut-rate price. The plaintiffs sued for an injunction, relying upon the Miller-Tydings Act, which exempts contracts prescribing minimum prices for the resale of trademarked commodities from the prohibitions of the Sherman Act where such contracts are lawful under local law.

In an opinion by Justice Douglas, six members of the United States Supreme Court held that enforcement of the price arrangement against a nonsigner violated the Sherman Act, since only voluntary minimum price arrangements were excepted therefrom by the Miller-Tydings Act. Justice Frankfurter, with the concurrence of Justices Black and Burton, dissented on the ground that the latter act was intended to immunize state fair trade laws, including their "nonsigner" provisions, against charges under the Sherman Act.

The members of the Court also disagreed as to the weight to be given to the legislative history of the Miller-Tydings Act. Justices Jackson and Minton, concurring in the opinion of the Court, rested their decision solely upon the language of the act, holding it unnecessary and improper to inquire into its legislative history. On the other hand, the other Justices composing the majority, as well as the dissenters, relied upon the legislative history, but disagreed as to its significance.

The appended annotation in 19 ALR 2d 1139 is a comment note entitled

"The prosecutor will be satisfied with a simple yes or no from the witness."

"Application of state 'fair trade' law to nonsigning reseller as violation of federal anti-trust laws."

Federal Tort Claims Act — *claims involving discretionary duty.* In Coates v. United States, 181 F2d 816, 19 ALR 2d 840, an action against the United States was brought under the Federal Tort Claims Act for damage to the plaintiff's land and crops by a river control project of the United States so as to create an avenue of water transportation. The statute provided for its inapplicability to any claim based upon the exercise or performance of "a discretionary function or duty on the part of a federal agency . . . whether or not the discretion involved be abused."

Dismissal of the complaint for lack of jurisdiction was sustained by the Eighth Circuit, in an opinion by Circuit Judge Woodrough, which, reviewing the meaning traditionally accorded the phrase "discretionary function or duty" by the courts, as well as committee reports bearing on its meaning, held that the project involved was within the statutory exception which deprived the court of jurisdiction of the claim stated.

The title of the appended annotation in 19 ALR2d 845 is "Federal Tort Claims Act: construction of provision excepting claims involving 'discretionary function or duty'."

Habeas Corpus — *denial of appeal.* State prison authorities, enforcing prison rules, prevented a prisoner from sending out appeal documents until it was too late to take an appeal. Years after the restraint was removed, the prisoner filed a petition for a delayed appeal, which was denied by the state courts as matter of discretion.

In an opinion by Justice Black, the United States Supreme Court held in Dowd v. United States ex rel. Cook, 340 US 206, 95 L ed 215, 71 S Ct 262, 19 ALR2d 784, that the discriminatory denial of the statutory right of appeal was a violation of the equal protection clause of the Fourteenth Amendment, that the prisoner had not waived his right to appeal, and that he should be discharged on writ of habeas corpus unless the state, within a reasonable time, afforded him full appellate review.

An exhaustive discussion of "Habeas corpus on ground of deprivation of right to appeal" is found in the extensive appended annotation in 19 ALR2d 789.

Highways — *injury on park strip.* In Mast v. Galena, 168 Kan 628, 215 P2d 152, 19 ALR2d 1049, an action against a city for damages for personal injuries, the petition alleged that the injuries were sustained while walking in the evening across a parking strip between a sidewalk and curb, a few feet from a small walk leading from the street to the sidewalk, and falling into a water meter hole covered by a worn and defective tin lid.

A judgment entered upon overruling a demurrer to the petition was reversed by the Supreme Court of Kan-

was, in an opinion by Justice Smith, which, ruling that a city does not owe as high a degree of care to one walking on a parking strip as it owes to one using a street or sidewalk, held that the petition did not state a cause of action.

"Liability for injury on parking or strip between sidewalk and curb" is the subject of the appended annotation in 19 ALR2d 1053.

Holographic Will — *place of signature.* Hall v. Brigstocke, 190 Va 559, 58 SE2d 529, 19 ALR2d 921, was a suit in chancery involving property previously distributed under the statute of descents and distributions was brought by an administrator d. b. n. c. t. a. to impress a trust thereon in favor of legatees named in a will subsequently found and duly probated. The defendants in possession of the property demurred on the ground that the paper in question was not a valid will. The instrument was wholly in the handwriting of the purported testatrix, contained her name on the top, followed by the statement: "Written by myself October 13th 1946 My Will," made a complete disposition of all her property, contained nothing to indicate that it was not her last will and testament, and concluded with the statement: "This is my last will and testament." A statute provided: "No will shall be valid unless it be in writing and signed by the testator . . . in such manner as to make it manifest that the name is intended as a signature."

A decree dismissing the bill upon sustaining a demurrer thereto was reversed by the Supreme Court of Appeals of Virginia, in an opinion by Justice Gregory, which held that the signature to a will need not appear at the foot or end of the instrument provided the paper shows on its face that the name placed in the writing was intended as a signature, and that the instrument herein involved complied with the statutory requirement.

The extensive appended annotation in 19 ALR2d 926 discusses "Place of signature of holographic wills."

Infant — *tort action against parent.* An action for wrongful death was brought in Cowgill v. Boock, 189 Or 282, 218 P2d 445, 19 ALR2d 405, by the personal representative of an unemancipated minor child against the personal representative of his father who was driving the car, with his son as passenger, at the time of the accident fatal to both. A cause of action to recover damages resulting from death was granted by statute where the decedent, had he lived, might have maintained an action against the wrongdoer for an injury done by the same act or omission.

Judgment entered on a verdict for the plaintiff was affirmed by the Supreme Court of Oregon, in an opinion by Justice Belt, which reviewed authorities supporting and departing from the common-law doctrine of nonliability of a parent for a personal injury sustained by an unemancipated minor child, and, though favoring its retention in the case of an injury resulting

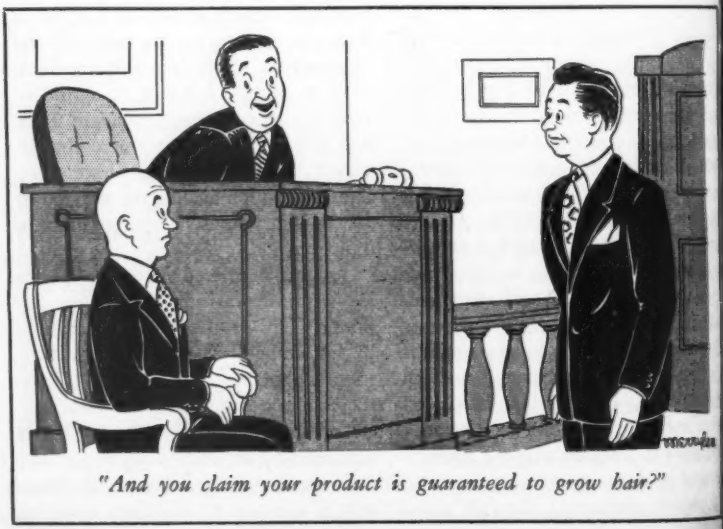
from mere negligence or an unintentional wrong, held that the rule should be modified to allow recovery for a wilful or malicious personal tort. Within the meaning of this modified rule, acts of a father in arbitrarily compelling his protesting minor child to ride in an automobile driven by the father, while intoxicated, at a high rate of speed at night over a mountainous highway were regarded as wilful misconduct in clear abandonment of parental duty.

The appended annotation in 19 ALR2d 423, entitled "Liability of parent or person in loco parentis for personal tort against minor child," supersedes a series of earlier annotations on this subject.

Injunction Relief — *against submission of constitutional amendment, statute, etc.* Bardwell v. Parish Council, 216 La 537, 44 So2d 107, 19 ALR 2d 514, involved a municipality which called an election to amend its charter, although it was advised that the proposed amendments were unconstitutional. Resident taxpayers brought suit to enjoin the holding of the election on that ground.

In an opinion by Justice McCaleb the Supreme Court of Louisiana dismissed the suit as premature, applying the general rule that an injunction will not issue to prevent the holding of an election.

The appended annotation in 19 ALR2d 519, superseding an earlier an-



"And you claim your product is guaranteed to grow hair?"

notation on the point, discusses the single question of whether the submission to the electorate of a proposed amendment to the state constitution or of a proposed statute, municipal charter, or municipal ordinance, validly submitted, may be enjoined on the ground that the proposed action, even if favorably voted upon, would in substance be unconstitutional.

Insurance on Buildings — *extensions, additions, etc., within.* In Frohlich v. National Union Fire Insurance Co., 327 Mich 653, 42 NW2d 657, 19 ALR2d 604, the Michigan Supreme Court (In Banc) held, in an opinion by Justice Dethmers, that a garage used exclusively by tenants of a building and admittedly "attached" thereto is a "communicating addition," within the meaning of an insurance policy covering the building and "its attached and communicating additions," notwithstanding communication between the buildings was by means of a ten-foot uninclosed pathway extending across the insured's property between doors located in the two buildings.

The appended annotation in 19 ALR2d 606 is concerned with provisions in fire insurance policies, or other policies insuring buildings against certain risks, which expressly stipulate for coverage to "additions," "extensions," "additions adjoining and communicating," etc., to buildings.

Labor Relations Act — *protection of informal activities of employees.* Enforcement of an order of the National Labor Relations Board for reinstatement by the respondent employer of three discharged employees with back pay was sought in National Labor Relations Board v. Kennamet Inc., 182 F2d 817, 19 ALR2d 502. The employees had been discharged because of their leadership in a single spontaneous brief work stoppage by nonunion employees to present wage grievances to the employer. The Third Circuit, in an opinion by Circuit Judge Goodrich, adjudging enforcement of the order, held the action of the employees to be that of a "labor organization" and a "concerted activity," within the protection of the National Labor Relations Act against unfair labor practices.

The subject of discussion in the appended annotation in 19 ALR2d 5 is "Spontaneous or informal activity employees as that of 'labor organization' or as 'concerted activities' with protection of Labor Relations Act."

Life Insurance Beneficiary — *change of.* The action in Gayden Kirk, 207 Miss 861, 43 So2d 568, ALR2d 1, against an insurer on a life insurance policy was brought by one designated therein as secondary beneficiary, the primary beneficiary having predeceased the insured. The defendant insurer, pursuant to statutory authority, paid the insurance proceeds into court and had another claimant the fund substituted as defendant. Before his death the insured, who, under the terms of the policy, had the

o change beneficiaries by securing an dorsement of the change on the face f the policy, did everything in his ower to designate the substituted de- ndant as the new beneficiary, but in- rsement thereof was prevented by e plaintiff, who had possession of the olicy and withheld the same notwith- nding requests therefor. The evi- nce was conflicting as to whether ere had been such transfer and de- very of the policy by the insured to e plaintiff as to deprive the former f title thereto and control thereof.

Judgment for the substituted defend- nt was affirmed by the Supreme Court f Mississippi, in an opinion by Chief ustice McGehee, which held that the rovision for indorsement of change f beneficiary was for the benefit of the surance company, which waived its ghts thereunder by paying the pro- eds into court and securing substitu- on of the defendant claimant; that e conflicting evidence was sufficient warrant a finding that the insured d not parted with title to, and con- ol of, the policy by a transfer and elivery to the plaintiff; and that the ts of the insured were sufficient to fect a change of beneficiary as ainst the plaintiff, who could not revent the change by wrongfully with- lding the policy.

The extensive appended annotation 19 ALR2d 5 contains an exhaustive scussion of "Change of beneficiary in d line insurance policy as affected by ilure to comply with requirements to manner of making change."

Liquor Advertising — *regulation of.* A proceeding for a declaratory judgment was brought against the Montana Liquor Control Board, Fletcher v. Paige, — Mont —, 220 P2d 484, 19 ALR2d 1108, to determine the validity of its order directed to all Montana licensed brewers and beer wholesalers, and issued pursuant to a statute prohibiting billboard or signboard advertising of "liquor," but containing an express exception as to "any advertisement respecting beer or malt liquor on a brewery or premises where beer or malt liquor may be lawfully stored." The statute also defined "liquor" as including "malt or other liquor" containing a specified percentage of alcohol, but such definition was subsequently amended so as to clarify the distinction between liquor and beer.

A judgment for the plaintiff was reversed by the Supreme Court of Montana, in an opinion by Justice Metcalf, which held that the original legislative intent to include beer within the advertising prohibition clearly appeared from the statutory definition of "liquor" and from the limited signboard advertisements of beer expressly permitted, that such prohibition of beer advertisements was not impliedly repealed by the subsequent amendment of the statutory definition of "liquor," and that the statutory prohibition was not unconstitutional as an unreasonable interference with a lawful business.

The appended annotation in 19 ALR

2d 1114 discusses the "Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors."

Lockers — *liability for loss of contents.* One claiming to have deposited a valuable package in a locker in a railroad station and found it missing upon his return brought an action in Marsh v. American Locker Co., 7 NJ Super 81, 72 A2d 343, 19 ALR2d 326, for its loss against the operator of the locker service. The locker was unattended and unguarded and was operated by the depositor who, upon insertion of the required coin, had exclusive operation of the locker and possession of the key. The defendant also had access by possession of a master key for the purpose of removing property remaining more than a designated time, but negligence did not appear either in such operation or in the physical condition of the locker or its lock. The plaintiff, testifying that he had not read the same, made no attempt to establish the specific contractual arrangement set forth on the face of the locker.

Dismissal of the action at the close of plaintiff's testimony was affirmed by the Superior Court of New Jersey, Appellate Division, in an opinion by Senior Judge Jacob

"Smith, Smith, Smith and Smith are suing because we mentioned only one Smith in our broadcast."

which, distinguishing modern locker cases from the typical common-law bailment in which possession of property was transferred by the bailor to a human being representing the bailee who thereby had control of the property, knowledge of the facts, and substantial opportunity of denial of claims, held that there could be no recovery in the absence of a showing of negligence or other proof as to the contractual relationship between the parties.

The appended annotation in 19 ALR 2d 331 discusses "Liability of one furnishing lockers for hire or to patrons for loss of packages or goods placed therein."

Municipal Electric Street Lighting System — *liability for injury from.* The decedent of the plaintiff in Cabana v. Hart, 327 Mich 287, 42 NW2d 97, 19 ALR2d 333, was electrocuted as the result of coming in contact with a lamppost set in the sidewalk and maintained by the defendant municipality as a part of its street-lighting system. A statute provided for liability of a city to any person injured on a public street by reason of neglect of the city to perform its duty to keep the sidewalk reasonably safe for travel.

Judgment entered on a verdict for the plaintiff, after denial of defendant's motions for a directed verdict, for judgment notwithstanding the verdict, and for a new trial, was affirmed by the Supreme Court of Michigan, in an opinion by Justice Carr, which held that the plaintiff's proofs were sufficient to entitle him to have submitted to the jury the questions of defendant's negligence and its knowledge or notice of the situation. The claim of municipal immunity from tort liability for injuries resulting from the performance of governmental functions was regarded, as to the matter herein involved, as abrogated by the statutory provision as to streets and highways set forth above.

The subject of the appended annotation in 19 ALR2d 344 is "Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation or maintenance of its electric street lighting equipment, apparatus, and the like."

Punitive Damages — *from municipal corporation.* In Desforge v. West St. Paul, 231 Minn 205, 42 NW 2d 633, 19 ALR2d 898, an action to recover damages for the wrongful removal of dirt, sand, and gravel from the plaintiff's premises was brought against the defendant city and the defendant road contractor who acted under directions of the city engineer. Under the trial court's instructions, the jury was authorized to award treble damages against the city if the trespass was found to have been made wilfully and unlawfully.

Judgment rendered on a verdict against the city was reversed by the Supreme Court of Minnesota, in an opinion by Justice Thomas Gallagher, which held that exemplary damages against municipal corporations were not

coverable unless expressly authorized by statute, and that the statutory provision authorizing an award of treble damages against "every person who shall unlawfully and wilfully destroy or injure any real or personal property of another" was inapplicable to the acts involved herein, which were specifically covered by another statutory provision not authorizing an award of treble damages.

The appended annotation in 19 ALR 2d 903 discusses "Recovery of exemplary or punitive damages from municipal corporation."

Receipt of Gratuity or Relief — *effect on damages for personal injury.* For a period of about a year prior to incapacitation resulting from an attack by the defendant, the plaintiff in Mobley v. Garcia, 54 NM 175, 217 P2d 256, 19 ALR2d 553, an action for assault and battery, had been working as a waitress but also received monthly relief payments from the Department of Public Welfare, up until and after the time of the attack.

An award of damages for loss of earnings and earning capacity, included in a judgment for the plaintiff, was affirmed by the Supreme Court of New Mexico, in an opinion by Justice Compton, which held that the finding of loss of earnings and earning capacity was supported by substantial evidence, and therefore binding upon appeal; and that the receipt of relief payments did not preclude the recovery of damages for the loss of earnings and earning capacity.

The "Receipt of public relief or gratuity as affecting recovery in personal injury action" is the subject discussed in the appended annotation in 19 ALR2d 557.

Second Offender — *former crime as felony.* The defendant in People v. Olah, 300 NY 96, 89 NE2d 329, 19 ALR2d 219, previously convicted in New Jersey of the crime of larceny, was treated in the courts below as a second felony offender under a New York statute making so punishable a person who has been previously convicted under the laws of any other state of a crime which, if committed within New York, would be a felony. The dividing line between the felony of grand larceny and the misdemeanor of petit larceny is, under the statutes of New York, a value of the stolen property of $100, under those of New Jersey, one of $20. However, the indictment, to which the defendant had pleaded guilty in New Jersey, specified the value of the stolen property at $200. The issue was whether the question as to the nature of the crime as a felony within the meaning of the New York second felony offender statute was controlled by the definition of the crime in the New Jersey statute (that is, theft of property in the value of $20 or more, which under New York law is only a misdemeanor), or by the specifications in the indictment (that is, theft of property in the value of $200, which under New York law is a felony).

In an opinion by Justice Fuld, the New York Court of Appeals held that

the question was controlled by the statutory definition and not the specifications in the indictment, even though they were proven at the trial; and that consequently the defendant could not be treated as a second felony offender.

The opposite view was taken by three Justices, who pointed out that under the majority view a defendant had to be treated as a first offender, no matter how many larcenies he had committed in the forty-five sister states in which the dividing line between felony and misdemeanor was at less than $100.

The "Determination of character of former crime as a felony, so as to warrant punishment of an accused as a second offender" is the subject of the appended annotation in 19 ALR2d 227.

Self-Crimination — *party membership.* A witness in Rogers v. United States, 340 US 367, 95 L ed —, 71 S Ct 438, 19 ALR2d 378, testified that, by virtue of her office as treasurer of the Communist Party, she had been in possession of books and records of the Party, until she turned them over to another, but refused to disclose the name of the recipient, relying upon her privilege against self-incrimination.

In an opinion by Chief Justice Vinson, five of the justices of the United States Supreme Court held that the witness was not justified in refusing to answer, primarily because, after her disclosure of membership in the party, an answer could no further incriminate her.

Justice Black, with the concurrence of Justices Frankfurter and Douglas, dissented on the grounds that the witness never had waived her privilege and that the question called for additional incriminating information.

The appended annotation in 19 ALR 2d 388 discusses "Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group."

Sprinkler System — *as fixture.* Recovery of an installed sprinkler system was sought in Schnebbe Fire Protection Engineering Corp. v. Sandt's Estate, 365 Pa 287, 74 A2d 104, 19 ALR2d 1298, a replevin action. It had been agreed that title to the sprinkler system should remain in the plaintiff "as personal property" until completion of the contract. A prior mortgagee of the premises, who had no notice of the installation, was not a party to the agreement, and committed no act constituting an estoppel, became the purchaser of the premises at a foreclosure of his mortgage. The plaintiff did, however, give notice of his claim of title at the foreclosure sale.

Judgment entered on a verdict directed for the defendants was affirmed by the Supreme Court of Pennsylvania, in an opinion by Justice Allen M. Stearne, which held that the sprinkler system became a part of the realty irrespective of the agreement and passed with the realty to the mortgagee as purchaser at the foreclosure sale.

"Sprinkler system as fixture" is the

subject of the appended annotation in 19 ALR2d 1300.

Succession Taxes — *tax on subject of power of appointment.* Objections were made by the proceedings in Re Newton, 35 Cal2d 830, 221 P2d 952, 19 ALR2d 1399, to the report of a California inheritance tax appraiser who included a tax upon the exercise by the decedent, in his will, of a power of appointment. The power of appointment had been created by the will of the decedent's father who left a testamentary trust of considerable intangible property. The trust provided for an income to the son for life and for a power by will to appoint his wife to take on his death a specified proportion of the trust estate. California was the residence of the son at the time of his death, but New York was his residence at the time of the execution of his will, as well as the residence of the father at the time of the latter's death, and the residence of the trustees.

The California statute, imposing a tax on a gift of a power of appointment created by a resident donor, contained a saving clause applicable to powers of appointment created by donors dying prior to the statute's effective date, under which saving clause the tax was imposed on the exercise of the power of appointment by a resident donee. The death of the father prior to the effective date of the statute called for the application of the saving clause to the son's exercise of the power.

An order sustaining the objections

to the report of the inheritance tax appraiser was reversed by the Supreme Court of California, in banc, in an opinion by Justice Shenk, which following the United States Supreme Court in overruling earlier authority to the contrary, held the imposition of the tax to be within the power or jurisdiction of the state.

"Inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or residence of parties, outside the taxing state or country" is discussed in the appended annotation in 19 ALR2d 1415.

Veteran's Loan — *side agreement.* Enforcement of a mechanic's lien for the construction of a house for a war veteran was sought in Young v. Hampton, 36 Cal2d (Adv 763), 228 P2d 1,

19 ALR2d 830, by the contractor. For the purpose of obtaining a guaranteed loan under the Federal Servicemen's Readjustment Act, the parties had executed a purported contract for a construction price set by an appraiser under the act, which contract was intended to be superseded by a secret cost plus 10 per cent agreement thereafter executed by the parties and sued upon herein. Final approval and guaranty of the loan had not been made by the Veterans' Administration which had, however, received the application therefor and the reports of the appraiser, and of the bank making the loan. A dispute having arisen between the parties, the contractor's last payment was withheld, and the house not having been completed by the date specified in the first contract, the veteran cross-complained for the reasonable rental value of the premises for the period of the delay.

A judgment for the balance due under the cost-plus agreement and for foreclosure of a lien upon the realty was reversed by the Supreme Court of California, in banc, in an opinion by Justice Edmonds, which held the side agreement to be in violation of the public policy established by the act and therefore void and unenforceable. Denial of recovery on the cross complaint was, however, upheld on the ground that the date set for completion of the house was contained only in a contract not intended by the parties to be binding.

The "Validity and effect of side agreement affecting cost of property covered by veteran's loan under Servicemen's Readjustment Act" is discussed in the appended annotation in 19 ALR2d 836.

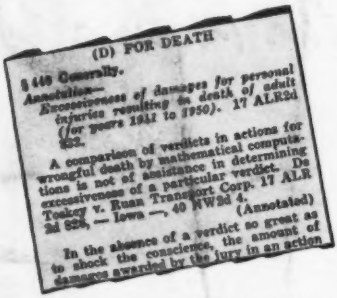
Wills — *nature of remainders to heirs.* The holographic will of a lawyer, the construction of which was involved in Burton v. Kinney, — Tenn —, 231 SW2d 356, 19 ALR2d 366, left real and personal property to the testator's wife for life and the remainder "in equal moities to my heirs and her heirs." The deceased was survived by his widow and descendants of his brothers and sisters, but by no child or parent.

A decree that the estates in remainder, both as to the testator's and life tenant's heirs, were contingent and that the property passed according to the Statutes of Descent, was reversed in part by the Supreme Court of Tennessee, in an opinion by Chief Justice Neil, which held that the remainder to the heirs of the testator was vested while the remainder to the heirs of the life tenant was contingent.

"Nature of remainders created by will giving life estate to spouse of testator, with remainder to be divided equally between testator's heirs and spouse's heirs" is discussed in the appended annotation in 19 ALR2d 371.

Dennis Dooley, Atty.
State Librarian
State House
Boston, Mass.

IS IT EASY TO FIND?


(D) FOR DEATH

§ 449 Generally.

Annotation—

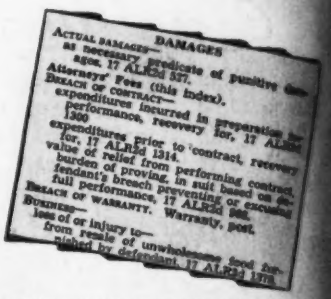
Excessiveness of damages for personal injuries resulting in death of adult (for years 1941 to 1950). 17 ALR2d 822.

A comparison of verdicts in actions for wrongful death by mathematical computations is not of assistance in determining excessiveness of a particular verdict. De Tookey v. Ruan Transport Corp. 17 ALR 2d 828, — Iowa —, 40 NW2d 4.

(Annotated)

In the absence of a verdict so great as to shock the conscience, the amount of damages awarded by the jury in an action

FROM THE DIGEST TO ALR 2d


DAMAGES

ACTUAL DAMAGES—
as necessary predicate of punitive dam-
ages. 17 ALR2d 327.
Attorneys' Fees (this index).
BREACH OF CONTRACT—
expenditures incurred in preparation for
performance, recovery for, 17 ALR2d
1300
expenditures prior to contract, recovery
for, 17 ALR2d 1314.
value of relief from performing contract,
burden of proving, in suit based on de-
fendant's breach preventing or excusing
full performance, 17 ALR2d 995.
BREACH OF WARRANTY. Warranty, post.
BUSINESS—
loss of or injury to—
from resale of unwholesome food for-
nished by defendant, 17 ALR2d 1378

FROM THE WORD INDEX TO ALR 2d

An important question! No matter how good the law, no matter how superior the annotation, it all amounts to a hill of beans unless *you can find what you want quickly and easily.*

AMERICAN LAW REPORTS 2nd SERIES

has all three qualities: the law, superb annotations, and a Digest and a Word Index that makes the law and annotations instantly available.

You will be amazed at how simple it is to use ALR 2d.

The Lawyers Co-operative Publishing Co., Rochester 14, N.Y.
Bancroft-Whitney Company, San Francisco 1, California